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FEDERAL ELECTION COMMISSION  
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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

) MURs 4530 and 4547

Chien Chuen "Johnny" Chung (4530) )

Automated Intelligent Systems, Inc. (4530) )

Clinton/Gore '96 Primary Committee, Inc. )

and Joan Pollitt, as treasurer (4547) )

**SENSITIVE**

**GENERAL COUNSEL'S REPORT**

**I. INTRODUCTION**

NR 84-574-47-33

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by the DNC Services Corporation/Democratic National Committee ("DNC"), requesting that the Commission investigate issues that were raised in the news media surrounding "certain contributions" to the DNC, including those of Chien Chuen "Johnny" Chung ("Chung") and his company Automated Intelligent Systems, Inc. ("AIS"). On June 17, 1997, the Commission found reason to believe that Chung and AIS each violated 2 U.S.C. § 441e(a) and that Chung also violated 2 U.S.C. § 441f of the Federal Election Campaign Act of 1971, as amended ("the Act"). Since that time, Chung has pled guilty to criminal conspiracy to violate 2 U.S.C. §§ 441a and 441f in connection with two conduit schemes, including \$20,000 in reimbursed contributions to the Clinton/Gore '96 Primary Committee. Chung has been sentenced to five years probation and 3000 hours of community service, and has testified before the House Committee on Government Reform.<sup>1</sup>

<sup>1</sup> In addition, two representatives of this Office attended a briefing and interview with Chung and his lawyer on April 26-27, 1999, along with representatives of the House Committee on Government Reform. The House Committee has made the notes of its representatives publicly available on its website.

Finally, this Office recommends that the Commission take no further action with respect to AISI and close the file with respect to that respondent.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Applicable Law**

#### **1. Section 441a**

The Act provides that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000; to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$20,000; or to any other political committee in any calendar year which, in the aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(1). An undesignated contribution is applied to the candidate's next upcoming election. 11 C.F.R. § 110.1(b)(2)(ii). Pursuant to 2 U.S.C. § 441a(a)(3), an individual is prohibited from making contributions aggregating more than \$25,000 in a calendar year. Furthermore, any contributions made to a candidate in a year other than the calendar year in which the election is held with respect to which such a contribution is made, is considered made during the calendar year in which such election is held. Id.

#### **2. Section 441e**

The Act prohibits the solicitation, making, acceptance and receipt of any campaign contribution from foreign nationals:

It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to

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make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

2 U.S.C. § 441e(a). Section 441e thus prohibits even a U.S. citizen's use of money acquired from a foreign national, if that money was acquired for the purpose of enabling the foreign national to make political contributions. Commission regulations further prohibit foreign nationals from participating in any decision-making process regarding any federal or non-federal election-related activities, including contributions or expenditures. 11 C.F.R. § 110.4(a)(3). These prohibitions apply to all federal, state, and local elections, and to both expenditures and contributions by foreign nationals. 11 C.F.R. § 110.4(a)(1). The prohibitions of Section 441e apply to all contributions "in connection with an election to any political office," including contributions to the non-federal accounts of national party committees.<sup>2</sup>

The Act defines "foreign national" as either a foreign principal as defined in 22 U.S.C. § 611(b), or a noncitizen who is not lawfully admitted for permanent residence as defined in 8 U.S.C. § 1101(a)(20). The term "foreign principal" includes:

- (1) a government of a foreign country and a foreign political party;
- (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

<sup>2</sup> Although one district court has held that the foreign national prohibition at Section 441e(a) applies only to contributions for federal elections, U.S. v. Trig, 23 F. Supp. 2d 55 (D.D.C. 1998), the Court of Appeals for the District of Columbia Circuit recently ruled that Section 441(e) prohibits foreign soft-money donations. U.S. v. Kanchanalak, 1999 WL 798065 (D.C. Cir. October 8, 1999).

22 U.S.C. § 611(b).

) Thus, Section 441e of the Act prohibits foreign national individuals, governments, and other entities from making contributions and expenditures in connection with federal, state, and local elections, and from participating in the decision-making process regarding such contributions and expenditures.<sup>3</sup>

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<sup>3</sup> For other matters addressing 2 U.S.C. § 441e, see MUR 4398 (Kramer) (Commission conciliated with contributor individual; recipient); MUR 4239 (Arison) (contributor individual; recipient); MUR 3801 (Sharon Pratt Kelly Committee) (recipient); MUR 3541 (Schoemehl) (contributor individual; solicitor; and recipient); MUR 3460 (Sports Shinko) (contributor domestic subsidiary of foreign corporation and foreign national directors); and MUR 2892 (Friends of Frank Fasi) (contributor individuals and corporations, instrumentality of a foreign government).

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**B. Analysis****1. Background**

Chung, a United States citizen since 1988, was, during the time relevant to this matter, the Chairman and CEO of AISI, a California corporation engaged in the fax broadcast system business. While this was a legitimate business, it was not profitable; however, AISI received sizable sums from investors in the company during 1993 and 1994. Beginning in 1995, through the end of 1996, Chung derived significant income from Chinese business contacts, for whom he performed services such as assisting them to obtain visas, escorting them around the country, and introducing them to government officials.

As discussed below, from 1994-1996, Chung, individually and through AISI, made approximately \$400,000 in political contributions, including \$366,000 to the DNC. It appears that the source of \$20,000 of Chung's contributions during 1996 were foreign nationals who transferred funds to Chung for the purpose of making political contributions, and that Chung accepted and received funds to be used for that purpose, in violation of 2 U.S.C. § 441e(a). During 1996, Chung also contributed, in his own name, \$10,000 to the Democratic Senatorial Campaign Committee, and \$1,000 each to the Kerry Committee primary and general election accounts. Through conduits whom he reimbursed, Chung contributed another \$8,000 to the Kerry Committee in 1996 and at least \$20,000 to the Clinton/Gore '96 Primary Committee ("Clinton/Gore '96") in September 1995.

2. Excessive Contributions and Contributions Made in the Names of Others<sup>4</sup>

a. Clinton/Gore '96 Century City Fundraiser

In 1995, Chung became a member of the Clinton/Gore '96 Southern California Finance Council and committed to raise \$100,000 in contributions. See Exhibits 67 and 68 to the Interim Report and the House deposition of Kimberly Ray ("Ray").<sup>5</sup> In connection with a September 21, 1995 fund-raising dinner in Century City, California, Ray, Southern California Finance Director for Clinton/Gore '96, sent a letter to Chung dated August 5, 1996, stating that she hoped "you have already begun talking to people about the dinner and securing their commitments," and enclosed remit cards for contributors to fill out and mail to Clinton/Gore '96 along with their contributions. Exhibit 67 to the Interim Report. On September 11, 1995, Ray faxed a memorandum to Chung, asking for a list of names for preliminary seating purposes for the September 21 dinner, and advising that people could not be part of that seating unless their contributions were received by September 19. The memorandum further advised that "[s]ubstitutions. . . (i.e. Susie Smith paid \$1,000 but Johnny Jones is attending in her place)" had to be called in by September 20. The memorandum ends with "Johnny—I'm not showing any individual commitments or contributions toward your 100K commitment you made to Terry [McAuliffe, Clinton/Gore '96's National Finance Chair]. Time is running out. Please advise."

<sup>4</sup> The evidence in this section is drawn from the public record. The sources include the Criminal Information in U.S. v. Chung, No. CR 98-230, exhibits to the Interim Report of the House Committee on Government Reform and Oversight Campaign Finance Investigation and Related Matters ("Interim Report"), the House deposition testimony of Irene Wu, Nancy Lee, Kimberly Ray and Karen Sternfeld, and disclosure reports filed with the Commission. These materials, some of which have been partially redacted by the House Committee, are publicly available. In instances where the Commission obtained documents during the course of its investigation which were also available on the public record, the reference is to the public record.

<sup>5</sup> All exhibit references are to Chapter IV, Part C of the Interim Report.

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Exhibit 68 to the Interim Report. In her House Deposition, Ray testified that any funds raised by Chung for the September 21, 1995 dinner would have gone toward his \$100,000 fundraising commitment.

On September 19, 1995, Chung faxed to Karen Sternfeld ("Sternfeld"), Clinton/Gore '96 Deputy Finance Director for Southern California, a list of 24 guests who would be attending the September 21, 1995 dinner, including himself, his wife, employees of AISI, and others. Exhibit 42 to the Interim Report. According to the Interim Report, the list also included several Chinese nationals who were ineligible to contribute to Clinton/Gore '96. In her House deposition, Sternfeld testified that Chung brought a \$25,000 check made out to the DNC to the Century City event. Sternfeld further testified that "I told Mr. Chung at the time that I couldn't accept that check. . . . I let him know that we needed individual contributions from his guests." She testified that she also told Chung that contributions to Clinton/Gore '96 were limited to \$1,000 per individual. Sternfeld testified that Chung told her he would "messenger the checks or Ms. Wu would bring them the next day." According to the Chung Criminal Information, Chung attended the dinner with approximately 20 guests.

In her House deposition, Irene Wu ("Wu"), who had been an AISI employee since 1994, testified that she received a telephone call the next morning from Sternfeld, who told Wu that Chung had given a check the Committee could not accept, and that they still needed individual checks for the event. Wu testified that she told Sternfeld that all the guests had left, and she could not get the individual checks anymore, and that Sternfeld responded that the contributors did not necessarily have to be the same people that attended the event. Sternfeld said that she

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and others from Clinton/Gore '96 would be at a restaurant after 5:00 p.m. that evening, and that Wu could deliver the checks to her there.

Wu further testified that when Chung arrived at the AISI offices, after Wu had spoken to Sternfeld,

we knew we had to take care of this, so we started talking about it, what needs to be done. And so he said, "we have to find the individual checks." And I understood it as part of my job in assisting him that I would call around and get the checks together.

According to Wu, Chung told her that he was going to reimburse the individuals who contributed with cash.

Wu testified that she wrote a \$1,000 check to Clinton/Gore '96, and was reimbursed by Chung. Wu further testified that she collected checks from other AISI employees, and also asked her former husband to find people to make contributions, which he did. In addition, Wu called Nancy Lee ("Lee"), who worked as a part-time bookkeeper for AISI at night, and worked full-time at another company called during the day. Wu told her about the call from Karen Sternfeld, and asked Lee to help her get together individual checks. In her House deposition, Lee testified that Wu called her, asked her to collect \$1,000 checks as a favor, and that Wu said she was willing to exchange cash for the checks. Lee wrote a \$1,000 check herself and collected \$1,000 checks to Clinton/Gore '96 from several of her co-workers and others. Twenty individual \$1,000 checks were collected by Wu, her former husband, and Lee. According to the Chung Information, at Chung's direction, cash was withdrawn from two of Chung's personal bank accounts, and at Chung's direction, an AISI employee delivered \$1,000 in cash to each of the twenty conduit contributors to reimburse them for the \$1,000 checks they had written to

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Clinton/Gore '96.<sup>6</sup>

In accordance with her telephone conversation with Sternfeld that morning, Wu testified that she met Sternfeld, Ray, and others at a restaurant after work that evening, and delivered the checks collected that day. Sternfeld testified that after receiving the checks from Wu, "at that point [Chung] had fulfilled his commitment for the dinner."

<sup>6</sup> The twenty conduit contributors appear to have been Irene Wu, Na-Chi "Nancy" Lee, Woody Hwang, Liang-Miao Chiang, Ya-Hui Kao Hwang, Hsi-Chun Tsao Kang, Anna L. Kulesza, Mike Yen-Wen Wang, Steven Lin, Annie Ho, Ching Kai Lien, Chin Lin, Chun Ju Cheng, Meng Eng Sun, Yen Ling Shao, Susan Tan, William Cheung, Theodora Stantejsky, Xiadong Shan and Shih Chien Lin. See the Interim Report, Chapter IV, Part C and Irene Wu's House testimony. Clinton/Gore '96 reported receipt on September 29, 1995 of \$1,000 contributions from each of these individuals. The Kerry Committee, *infra*, also reported a contribution from a Shih Chieh Lin. This Office believes that this is the same individual as Shih Chien Lin.

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b. Kerry Committee Fundraiser

Johnny Chung also made contributions through conduits to the Kerry Committee. In a fax to Chung dated July 31, 1996, Barbara Kaltenbach of the Kerry Committee stated that the two ways Chung could be helpful to Senator John Kerry would be to host an event in Los Angeles in September or to contribute to the Massachusetts State Democratic Party. See Exhibit 98 to the Interim Report. In her House deposition, Irene Wu testified that she received a call from the Kerry Committee saying that Senator Kerry would be in town and Chung had promised to host an event for him. Wu and Chung talked, and decided to host a fundraising cocktail event on September 9, 1996 at the Peninsula Hotel in Beverly Hills, California. Wu stated that 10-12 people attended the event.

According to the Criminal Information, Chung attended the September 9, 1999 event with four guests, and in order to pay for these guests Chung and others agreed that Chung would contribute \$8,000 of his own money to the Kerry Committee through conduit contributors. Wu testified that right before the event, when they were already at the hotel, Chung asked her to make a \$2,000 contribution to the Kerry Committee in connection with the event, and said that he would reimburse her. Wu was present when Chung also asked AISI employee Shih-Chieh (Michael) Lin and Chung's chauffeur Steve Huang to write checks to the Kerry Committee, for which he said he would reimburse them. Wu identified an individual named Ernest Lee as an

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AISI shareholder, but did not know if he had been reimbursed for a political contribution. The Kerry Committee reported receipt on September 12, 1996 of \$2,000 contributions (divided \$1,000 each between the primary and the general) from each of Irene Wu, Shi Chieh Lin, Steve Huang and Ernest Lee. Chung wrote consecutively numbered checks, all dated September 9, 1996, from one of his personal bank accounts for \$2,000 to each of these individuals; on the check to Irene Wu, Chung wrote in the memo portion: "S.J. Kerry." See Exhibit 101 to the Interim Report.<sup>8</sup>

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<sup>8</sup> The Kerry Committee refunded each of these contributions on June 30, 1997.

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4. Making Contributions with Money Received from Foreign Nationals

a. Business Associates

In addition to making excessive contributions and contributions in the names of others. Chung appears to have made contributions using foreign funds in violation of Section 441e. Chung attended his first significant DNC fundraiser in August 1994, President Clinton's 48<sup>th</sup> birthday party, in connection with which he contributed \$11,000 through AISI. Chung met DNC fundraiser Richard Sullivan at this event, and thereafter Sullivan solicited contributions from him. According to Chung's House testimony, not only did attending this event make him feel like a "V.I.P.," but "it was after this event that [he] began to realize the value and importance that political donations could have on [his] ability to get access and to further his business contacts." He realized that in exchange for contributions, attending events and getting pictures with the President and Vice-President, he could promote his business, particularly the possibility of obtaining access to important people for active or potential business clients and AISI investors.

Chung emphasized that in China, photographs taken with high-level American officials "reflect the degree of your importance." Chinese businesspeople, Chung testified, were willing to pay him large amounts of money to obtain such photographs.

DNC fundraiser Richard Sullivan solicited Chung's contribution of \$40,000 for a December 3, 1994 event in Los Angeles featuring the First Lady. At this fundraiser, Chung met a woman who was associated with the Haomen Group, the second largest beer manufacturer in China. In mid-December, this woman sent \$100,000 to AISI through a company called "Golden Treasure," to have Chung promote Haomen beer in the United States and to have an opportunity for Haomen Group representatives to meet with important persons. Thereafter, at Richard Sullivan's suggestion, Chung brought Haomen Group representatives (who were foreign nationals) to a December 19, 1994 fundraiser. Chung, through AISI, contributed \$40,000, and he and his guests had their picture taken with Vice-President Gore. Chung also brought the Haomen Group representatives to a White House holiday reception on December 20, 1994, and the Haomen Group representatives had their picture taken with President Clinton and the First Lady — a picture they used in China to promote Haomen beer. According to Chung, as a result of his success in arranging meetings and pictures with high-level American officials for the Haomen Group representatives, the Haomen Group people were impressed with Chung, talked him up in China, and introduced him to many people.

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4. No Further Action against AISI

AISI made four contributions to the nonfederal corporate account of the DNC, totaling \$91,000: contributions of \$10,000 and \$1,000 in August 1994 and two contributions of \$40,000 each in December 1994, one in connection with a DNC luncheon event in Los Angeles in early December featuring the First Lady, to which Chung brought family members, and the other in connection with a December 19, 1994 dinner with the Vice President in Washington, D.C., to which Chung brought Haomen Group representatives. As noted previously, in mid-December, Chung had received \$100,000 to promote Haomen beer and to secure access to key people for Haomen Group representatives. However, the money received from the Haomen Group falls into the category of activity which this Office recommends that the Commission not pursue beyond a finding of reason to believe, as discussed above. In addition, during 1993 and 1994, AISI raised

hundreds of thousands of dollars from investors. While some of the investors appear from documents provided by Chung and AISI during this Office's investigation to have been foreign nationals, most were U.S. citizens or permanent residents at the time of their investments. Thus, even without the \$100,000 from the Haomen Group, bank records show that AISI would have had sufficient funds to make the \$40,000 contribution in connection with the December 19, 1994 fundraiser. Because AISI's Section 441e liability is unclear, and in order to focus this matter on the principal, Chung, this Office recommends that the Commission take no further action against Automated Intelligent Systems, Inc. and close the file as to that respondent.

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III. RECOMMENDATIONS

6. Take no further action against Automated Intelligent Systems, Inc. and close the file as to this respondent.

Date

10/15/99

  
Lawrence M. Noble  
General Counsel

Staff Assigned: Mark Allen

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